

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

United States of America,

Plaintiff,

Case No. 17-20184

v.

Judith E. Levy

United States District Judge

James Bowens (D-7),

Mona K. Majzoub

Magistrate Judge

Defendant.

_____/

**ORDER DENYING DEFENDANT JAMES BOWENS' MOTION
FOR COMPASSIONATE RELEASE [593]**

Before the Court is Defendant's request for compassionate release from federal custody due to the ongoing COVID-19 pandemic. (ECF No. 598.) For the following reasons, Defendant's motion is DENIED.

Background

On October 23, 2020, the Court sentenced Defendant to 168 months' imprisonment after he pled guilty to one count of RICO Conspiracy, in violation of 18 U.S.C. § 1962(d). (ECF No. 567.) The factual basis for Defendant's plea involves his participation in narcotics trafficking and racketeering activities for the "Young and Scandalous"/"Young and

Skantless”/“YNS” gang in Brightmoor, Detroit. (*See* ECF No. 505.) Specifically, Defendant admitted that he discussed narcotics distribution with other members of the conspiracy; participated in the wiring of proceeds from the sale of illegal narcotics; possessed with the intent to distribute cocaine in furtherance of the enterprise; and was personally involved in the distribution of, or it was reasonably foreseeable to Defendant that his co-conspirators distributed, at least 840 grams of cocaine base. (*See id.* at PageID.7305-7306.)

On June 7, 2021,¹ Defendant moved for compassionate release and/or reduction of his sentence pursuant to 18 U.S.C. § 3582(c)(1)(A)(i), arguing that the danger posed to him by the COVID-19 pandemic due to his severe obesity, high blood pressure, sleep apnea, thyroid hormone deficiency disorder, low potassium levels, and weak heart constitutes an “extraordinary and compelling reason” for release. (*Id.* at PageID.9162.) In his motion, Defendant noted that he “has elected NOT to take the Moderna COVID-19 vaccine.” (*Id.* at PageID.9157 (emphasis in original).) He additionally noted that it is

¹ Received and docketed July 1, 2021.

reckless and disingenuous for the government—or any agent of the government—to argue that because an experimental vaccine is available for use that federal inmates should subject themselves to it when there have been zero (0) long-term studies regarding its use and side-effects . . . Mr. Bowens is a federal inmate, not a federal test subject, and should not have his Motion prejudiced because he refuses to submit himself to an untested, rushed vaccine.

(*Id.*)

Analysis

Compassionate-release motions require a “three-step” inquiry:

First, the Court must “find that extraordinary and compelling reasons warrant a sentence reduction”;

Second, the Court must “ensure that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission”; and

Finally, the Court must “consider all relevant sentencing factors listed in 18 U.S.C. § 3553(a).”

United States v. Elias, 984 F.3d 516, 518 (6th Cir. 2021). “If each of these requirements are met, the district court may reduce the term of imprisonment. 18 U.S.C. § 3582(c)(1)(A).” *Id.*

The Court denies Defendant’s motion for compassionate release because his access to the COVID-19 vaccine mitigates the concern about

extraordinary and compelling medical conditions that might otherwise compel release. Courts in this circuit have consistently refused to find extraordinary and compelling medical circumstances when a defendant declines the COVID-19 vaccine. *See, e.g., United States v. Goston*, No. 15-20694 (E.D. Mich. Mar. 9, 2021) (Levy, J.); *United States v. Macgregor*, No. 15-20093 (E.D. Mich. Mar. 12, 2021) (Leitman, J.); *United States v. Ervin*, No. 14-000195 (M.D. Tenn. Mar. 5, 2021) (Richardson, J.). Additionally, the Centers for Disease Control and Prevention advise that the Moderna vaccine is 94.1% effective at preventing COVID-19 in individuals who have not previously contracted COVID-19, and “highly effective in clinical trials at preventing COVID-19 among people of diverse age, sex, race, and ethnicity categories and among people with underlying medical conditions.” *COVID-19 Moderna*, Centers for Disease Control (June 11, 2021) <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines/Moderna.html>.

Defendant is regrettably misguided about being a “test subject” for an untested vaccine.² To the contrary, the vaccine has been widely

² Though this may not be Defendant’s fault. As the undersigned has pointed out in previous opinions, the Bureau of Prisons (BOP) has monumentally failed to properly educate its staff and the detainees in its care about the necessity and efficacy

distributed around the world and is extremely effective at preventing infection from the COVID-19 disease. Between December 14, 2020 and June 14, 2021, health officials administered more than 310 million doses of COVID-19 vaccine in the United States. *Reported Adverse Events*, Centers for Disease Control (June 14, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/safety/adverse-events.html>. Administration of the COVID-19 vaccines has been subject to “the most intense safety monitoring in U.S. history,” with the CDC aggressively collecting data on vaccine safety and consolidating it in the Vaccine Adverse Event Reporting System (VAERS). *Id.* The “FDA [Food and Drug Administration] requires healthcare providers to report any death after COVID-19 vaccination to VAERS, even if it’s unclear whether the vaccine was the cause. A review of available clinical information, including death certificates, autopsy, and medical records, has not established a causal link [of death] to COVID-19 vaccines.” *Id.*

The CDC has noted that there are an extremely small number of individuals who, after vaccination, have experienced anaphylaxis (severe

of the COVID-19 vaccine. *See United States of America v. Keith Kennedy (D-3)*, No. 18-20315, ECF No. 150 (noting that, as of April 2021, less than half of BOP workers had themselves elected to get vaccinated).

allergic reaction)—“approximately 2 to 5 people per million”—and thrombosis (blood clots)—approximately 37 confirmed reports out of the 310 million vaccinated. *Id.* However, these experiences are rare and may be mitigated by the on-site medical monitoring and care available during the waiting period after vaccination. *See id.*

The undersigned hopes that Defendant will reconsider his decision to decline the vaccine. Regardless, his access to the vaccine mitigates any extraordinary and compelling circumstances that his medical conditions might otherwise present. Because there are no extraordinary and compelling reasons for release, the Court need not consider the remaining compassionate release factors at this time.³ *See Elias*, 984 F.3d at 518.

Accordingly, Defendant’s motion is DENIED.

IT IS SO ORDERED.

Dated: July 6, 2021
Ann Arbor, Michigan

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

³ Though were the Court to reach the § 3553(a) sentencing factors in this case, it would likely also deny release for the reasons set forth during sentencing.